INFORMATION BULLETIN

July 11, 2014 **2014-7**

CHANGES TO VARIOUS MEASURES CONCERNING INDIVIDUALS OR BUSINESSES

This information bulletin presents in detail changes to certain measures that affect individuals or businesses. The changes, mainly of a technical nature, are intended to enhance the coherence and integrity of the tax system.

The changes pertaining to individuals focus on the non-taxation of certain meal and transportation indemnities paid to employees who work overtime and the averaging of certain lump-sum payments for the purpose of calculating the health contribution.

Changes that affect businesses seek to clarify the eligibility requirements for refundable tax credits intended to encourage the creation of new financial services corporations.

Moreover, the information bulletin makes public the period for preserving supporting documents relevant to deductions and tax credits requested by individuals by means of their income tax return.

To obtain information on topics discussed in this information bulletin, please contact the Secteur du droit fiscal et des politiques locales et autochtones at 418-691-2236.

The French and English versions of this bulletin are available on the Ministère des Finances website (www.finances.gouv.qc.ca).

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1. NON-TAXATION OF CERTAIN MEAL AND TRANSPORTATION INDEMNITIES PAID TO EMPLOYEES WHO WORK OVERTIME

Under current tax legislation, an individual is required, subject to certain exceptions, to include in the calculation of his income for a given year from an office or employment the value of any indemnity for meals or transportation between the individual's ordinary place of residence and the individual's work location received by the individual in the year, as an allowance or refund or under any other form, for overtime worked in the course of performing the duties of the individual's office or employment.

The same goes for any amount corresponding to the excess of the value of a meal or service of transportation between the individual's ordinary place of residence and the individual's work location supplied in the year for overtime worked in performing the duties of the individual's office or employment on the amount the individual pays in respect of the meal or service of transportation.

However, the tax legislation stipulates that, when the overtime is performed at the request of the employer for a scheduled period of at least three consecutive hours and is infrequent or occasional in nature, no amount is to be included in the calculation of income from the office or employment of an individual in respect of:

- a meal supplied or an indemnity for meals in the form of total or partial refund upon presentation of vouchers, if the value of the meal supplied in respect of the overtime or the indemnity for such a meal is reasonable;

- an indemnity for transportation or a service of transportation supplied if:

  - on the one hand, public transit is not available or it is reasonable to consider that, under the circumstances, the individual's safety would be jeopardized because of the time at which the transportation is provided,

  - on the other hand, in the case of an indemnity for transportation, the indemnity is the full or partial refund, upon presentation of vouchers, of the taxi transportation expenses incurred by the individual because of the overtime to travel between the individual's ordinary place of residence and the individual's work location.

These exceptions are intended to take into account labour market conditions where it is not unusual for an employee to be asked to work overtime that engenders meal or transportation expenses that would not otherwise be incurred.

To ensure that the scheduled period of the overtime to be performed corresponds more fully to current labour market practices, the tax legislation will be amended to lower to at least two consecutive hours the duration of overtime.

This modification will apply as of taxation year 2014.

2. CALCULATION OF THE HEALTH CONTRIBUTION PAYABLE BY INDIVIDUALS WHO RECEIVE CERTAIN LUMP-SUM PAYMENTS

Since 2013, adults whose net income exceeds $18 000[1] are usually required to pay a health contribution to help fund the public healthcare system. The amount of the health contribution that an adult must pay for a given year is established according to his net income for the year.

It follows that individuals who receive during the year a lump-sum payment that is attributable to one or more previous years might be required to pay a health contribution that is higher than they would have paid if the income subject to the lump-sum payment had been received during each of the years to which the income pertains.

To ensure that the receipt of certain lump-sum payments attributable to one or more previous years does not unduly increase the amount payable, for any year subsequent to 2012, on account of the health contribution by the beneficiaries of such payments, an averaging mechanism similar to the one that applies for the purpose of calculating the contribution payable by individuals to the Health Services Fund will be implemented.

Any individual who receives in a given year subsequent to 2012 an eligible lump-sum payment, on which a portion at least equivalent to $300 pertains to one or more previous years, may ask to benefit, for the given year, from the new averaging mechanism.

To this end, the following will be deemed to be an eligible lump-sum payment:

— income from an office or employment, under the terms of a court judgment, arbitration award or a contract by which the parties put an end to a lawsuit;

— a labour adjustment benefit, an employment insurance benefit, a Québec Parental Insurance Plan benefit, a Québec Pension Plan benefit, or a Canada Pension Plan benefit;

— a support amount or the reimbursement of an amount paid as support amount that is covered by the first paragraph of section 312.5 of the *Taxation Act*;[2]

— any other amount, other than income from an office or employment, which, in the opinion of the Minister, would cause an undue additional burden were it taken into account to determine the health contribution payable in the year of its receipt.

When an individual has recourse to the averaging mechanism for a given year, his income for the year will be deemed, for the purpose of calculating the health contribution that he must pay for the year, not to include the portion of any eligible lump-sum payment included in such income that pertains to a previous year.

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1 This amount is subject to automatic annual indexing.

2 CQLR, chapter I-3.

However, the individual must adjust the amount of his health contribution thus calculated for the given year by an amount equivalent to all of the amounts each of which represents the amount of the adjustment in respect of a year prior to the given year and subsequent to 2012, to which is attributable an eligible lump-sum payment, hereinafter called the "eligible preceding year."

The amount of the adjustment in respect of a given eligible preceding year must, for the application of the averaging mechanism to a given year, be determined by means of the following formula:

[Excess of the rectified amount of the health contribution payable for the eligible preceding year over the health contribution payable for that year – Cumulative amount of adjustments made in a preceding year in respect of the health contribution for the eligible preceding year]

For the application of this formula:

— the expression "rectified amount of the health contribution payable" by an individual for a given eligible preceding year will mean the health contribution that would have been payable by the individual for the eligible preceding year if all of the eligible lump-sum payments attributable to the year that are submitted, for the given year or a preceding year, to the averaging mechanism were received immediately before the end of the eligible preceding year and included in the calculation of the individual's income for the eligible preceding year;

— the expression "cumulative amount of adjustments made in a preceding year in respect of the health contribution" will mean, for a given eligible preceding year, all of the amounts each of which represents the adjustment of the health contribution determined for a year that precedes the given year, following the application of the averaging mechanism to a payment attributable to the eligible preceding year.

Furthermore, when an eligible lump-sum payment received in a given year is attributable to an eligible preceding year that ended prior to the year immediately preceding the given year, an amount hereinafter referred to as "an amount in lieu of interest" must be added in the calculation of the health contribution payable by an individual in the given year.

More specifically, the amount in lieu of interest that an individual must pay for a given year will be equivalent to the amount of interest that would be calculated in respect of each of the eligible preceding years concerned at the prescribed interest rate payable on a refund due pursuant to a fiscal law for the period beginning on May 1 of the year following the eligible preceding year concerned and ending immediately before to the given year on the amount of the adjustment determined for the given year in respect of the eligible preceding year.

3. CHANGES TO REFUNDABLE TAX CREDITS AIMED AT ENCOURAGING THE CREATION OF NEW FINANCIAL SERVICES CORPORATIONS

The March 20, 2012 Budget Speech implemented two refundable tax credits to encourage the creation of new financial services corporations.[3]

On the one hand, an eligible corporation may benefit from a refundable tax credit to hire employees. The tax credit represents 24% of the eligible salary that the corporation pays to its eligible employees during a given taxation year included in the period of five years of eligibility for the tax credit. However, the tax credit is limited to $24 000 per eligible employee per year.

On the other hand, an eligible corporation may benefit from a refundable tax credit that represents 32% of the eligible expenses that it pays during a taxation year included in the five-year period. However, the tax credit is limited to $120 000 per year.[4]

The two tax credits are jointly referred to as the "refundable tax credit for new financial services corporations."

Two amendments will be made to the *Act respecting the sectoral parameters of certain fiscal measures* (hereinafter referred to as the "umbrella act")[5] to faithfully reflect the intention of the tax policy underpinning the tax credit.

❑ Clarification concerning eligible activities carried out by a corporation

When the refundable tax credit for new financial services corporations was implemented, it was stipulated that a corporation must show that its activities consist or will consist in one or more of the activities enumerated for the application of the tax credit.[6] Accordingly, the intent of the fiscal policy is that a corporation must exercise all of its activities among one or more of the activities.[7]

In this context, the umbrella act will be amended to specify that all of the activities of a corporation must consist in one or more of the activities eligible for the application of this tax credit. Moreover, a corporation may only obtain a sectoral document if it shows that all of the activities in which it engages qualify as eligible activities.

This modification will be declaratory.

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3 Ministère des Finances du Québec, *2012-2013 Budget, Additional Information on the Budgetary Measures*, March 20, 2012, pages 42-50.

4 Ministère des Finances du Québec, *2014-2015 Budget, Additional Information on the Budgetary Measures*, June 4, 2014, page 41. The rates were previously 30% and 40% and the annual ceilings were $30 000 and $150 000, respectively.

5 CQLR, c. P-5.1.

6 See note 3, page 43.

7 *Act respecting the sectoral parameters of certain fiscal measures*, Schedule E, s. 6.5.

❑ Relaxation of the criterion dealing with the absence of an arm's length relationship with a client

To benefit from the refundable tax credit for new financial services corporations, a corporation must render financial services to a client with which it does not have an arm's length relationship.[8]

Accordingly, all of the services rendered by an eligible corporation throughout a taxation year must be rendered among clients with which it does not have an arm's length relationship.

The eligibility criterion will be relaxed so that a corporation may render in a marginal manner services to clients with which it has an arm's length relationship. Accordingly, the umbrella act will be amended such that a corporation must from now on render all or almost all of its services to clients with which it does not have an arm's length relationship.

This amendment will apply to the taxation year of a corporation that ends after the date of publication of this information bulletin.

4. RETENTION PERIOD FOR SUPPORTING DOCUMENTS PERTAINING TO AN APPLICATION FOR TAX RELIEF

The *Tax Administration Act*[9] stipulates that every person who carries on a business or is bound under a fiscal law to deduct, withhold or collect an amount must keep registers at his establishment, at his residence or at any other place designated by the Minister. The registers and any document that supports the information that they contain must usually be preserved for six years after the last year to which they relate.

However, the Act does not stipulate the period of time during which a taxpayer must preserve supporting documents in respect of tax relief requested pursuant to a fiscal law,[10] when the taxpayer is not obliged to record the information in a register in respect of the relief.

In the same way, the *Taxation Act*[11] does not contain an across-the-board provision concerning the retention period for supporting documents pertaining to an application for tax relief. However, for most of the tax credits intended for individuals implemented in recent years, it was specifically provided that the supporting documents pertaining to the application for tax relief should be preserved for six years after the last year to which they relate.[12]

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8 *Ibid.*, s. 6.7.

9 CQLR, chapter A-6.002.

10 By way of an example, tax relief can take the form of a deduction in the calculation of net income or taxable income, non-inclusion in the computation of income, a non-refundable tax credit, a refundable tax credit or a refund.

11 CQLR, chapter I-3.

12 The retention period for supporting documents was provided, among other things, for the refundable tax credit for home support of seniors, the refundable tax credit for youth activities, the additional tax credit of 25% for an initial large cultural donation, the tax credit for cultural patronage by individuals, the EcoRenov refundable tax credit, the LogiRénov refundable tax credit, and the refundable tax credit for seniors' activities.

Moreover, for the application of the federal taxation system, taxpayers are usually obliged to preserve their supporting documents for six years after the last year to which they relate.[13]

To facilitate the administration of the taxation system and standardize the rules concerning the retention period for supporting documents, the *Tax Administration Act* will be amended to stipulate that taxpayers will generally be required to preserve supporting documents pertaining to any application for tax relief – other than tax relief in respect of which information must already be recorded in a register –, for six years after the last year to which the information relates or, if their income tax return has been filed late, for six years after the date on which it was sent.

For greater clarity, when the supporting documents are preserved on electronic or computerized medium, they must be preserved in an intelligible manner on the same medium.

The retention period for supporting documents may exceed six years when a taxpayer has notified a notice of objection in respect of an assessment or who is a party to an appeal under a fiscal law. In such instances, the supporting documents necessary for the examination of the objection or appeal must be preserved until the expiry of the appeal period or until the appeal is disposed of and, where applicable, until the time for filing any further appeal has expired or until any further appeal is disposed.

In all cases, the Minister may authorize in writing a taxpayer to relinquish the supporting documents that he must preserve before the expiry of the retention period stipulated.

13 *Income Tax Act* (R.S.C., 1985, c. 1, 5th suppl.), s. 230.